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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

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**No. 664.**

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THE IEBE COMPANY ET AL., APPELLANTS,

VS.

NORMAN E. SHAW, SECRETARY OF AGRICULTURE OF OHIO,  
ET AL.

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MOTION TO ADVANCE AND CONSENT THERETO.

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BRODE B. DAVIS,  
*Solicitor for Appellants.*

**(26,750)**

Charles E. Hughes,  
Of Counsel.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

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**No. 664.**

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THE HEBE COMPANY AND CARNATION MILK PRODUCTS COMPANY, CORPORATIONS, APPELLANTS,

*vs.*

NORMAN E. SHAW, SECRETARY OF AGRICULTURE OF OHIO;  
THOMAS C. GAULT, CHIEF OF BUREAU OF DAIRY AND  
FOODS OF THE BOARD OF AGRICULTURE OF OHIO; AND ALL  
OTHER OFFICERS AND AGENTS CLAIMING TO ACT UNDER  
THE AUTHORITY OF SAID THE BOARD OF AGRICULTURE OF  
OHIO, OR OF THE SECRETARY OF AGRICULTURE OF OHIO,  
APPELLEES.

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## MOTION TO ADVANCE.

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Come now The Hebe Company and Carnation Milk Products Company, by Brode B. Davis, Esq., their counsel, and move this honorable court to advance the above-entitled case on the docket for oral hearing, and for ground for said motion show to the court that in view of the expiration of the

term of office of the appellee, Norman E. Shaw, as Secretary of Agriculture of Ohio, on the 13th day of July, 1919, and of Thomas C. Gault, as Chief of Bureau of Dairy and Foods at the discretion of said Secretary of Agriculture, this action will then abate and cannot thereafter be revived against the successors in office of said officials, and the appellants will be thereby deprived of a hearing of said cause before this court.

The appellee, Norman E. Shaw, was duly appointed Secretary of Agriculture of Ohio on the 13th day of July, 1917. Under and by virtue of section 1087, General Code of Ohio, as amended March 30, 1917, 107 O. L., 460, the term of office of the Secretary of Agriculture is for two years.

The appellee, Thomas C. Gault, Chief of Bureau of Dairy and Foods of the Board of Agriculture of Ohio, holds office under appointment of the Secretary of the Board of Agriculture of Ohio, as provided by section 1087 of the General Code of Ohio, and his term of office may be terminated at any time by the Secretary of Agriculture.

The appellees, who were defendants below, as officers of the State of Ohio, charged with the enforcement of the dairy, food and drink laws of the State of Ohio, served notice upon appellants and their customers in the State of Ohio, that the food product, "Hebe," composed of evaporated skimmed milk and cocoanut oil, could not be sold in the State of Ohio from and after the 9th day of July, 1918; that if, after that date, said product be found upon the market, appellees and their subordinates would cause prosecutions to be brought against all wholesalers, jobbers, distributors and retailers selling, offering or exposing for sale, said food product known as "Hebe" in the State of Ohio.

Appellees say that the food product known as "Hebe" is pure, wholesome, and nutritious as an article of human food, and is plainly labeled to show its true nature, and so labeled is not within the condemnation of any valid act of the Legislature of the State of Ohio, and may lawfully be sold and offered for sale in the said State of Ohio; and that if any

statute of the State of Ohio shall be construed as absolutely prohibiting the sale of said food product so labeled, then said laws of Ohio, and each and all of them, as so construed, are unconstitutional and void, because in violation of the Fourteenth Amendment of the Constitution of the United States.

For the reason that this case will not be reached for hearing and decided before the expiration of the term of office of the appellees, and in order that the rights of appellants may be adjudicated by this court before the abatement of this action upon the expiration of the terms of office of said appellees, appellants respectfully request that this action be advanced for hearing to as early a date as may be proper under the rules of this court.

This application is made in view of the language of Mr. Justice Day in the opinion, at page 451, in Pullman Company *vs.* Knott, 243 U. S., 447.

Respectfully submitted,

THE HEBE COMPANY,  
CARNATION MILK  
PRODUCTS COMPANY,

By BRODE B. DAVIS,

**Charles E. Hughes,** *Solicitor for Appellants.*

**Of Counsel.**—

COLUMBUS, O., Sept. 17, 1918.

We hereby acknowledge the receipt of a copy of the foregoing petition and consent that said case may be advanced for hearing.

JOS. MCGHEE,

*Att'y Gen'l of Ohio;*

L. D. JOHNSON,

*Solicitors for Appellees.*

## SUPREME COURT OF THE UNITED STATES.

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APPELLEES.

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**AFFIDAVIT.**

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STATE OF OHIO,  
*Franklin County, ss:*

Norman E. Shaw, being first duly sworn, says that he is Secretary of Agriculture of the State of Ohio; that his term of office began on the 13th day of July, 1917, and will expire on the 13th day of July, 1919, as provided in section 1087 of the General Code of Ohio as amended March 30, 1917, 107 O. L., 460.

That Thomas C. Gault was appointed Chief of Bureau of Dairy and Foods on the 1st day of August, 1917, and holds office by such appointment for an indeterminate length of time, and that the term of office of the said Thomas C.

Gault may be terminated at any time by the Secretary of Agriculture.

That affiant and the said Thomas C. Gault are the defendants named in the bill of complaint filed on the 18th day of July, 1918, by The Hebe Company and Carnation Milk Products Company in the District Court of the United States for the Southern District of Ohio, Eastern Division.

N. E. SHAW.

Sworn to before me by the said Norman E. Shaw, and by him subscribed in my presence, this 17th day of September, 1918.

[SEAL.]

AUGUSTUS T. SEYMOUR,

*Notary Public, Franklin County, Ohio.*

[Endorsed:] File No. 26,750. Supreme Court U. S., October term, 1918. Term No. 664. The Hebe Company et al., appellants, vs. Norman E. Shaw, Sec'y, &c., et al. Motion to advance, proof of service of same, and affidavit of Norman E. Shaw in support thereof. Filed September 19, 1918.